

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC WILLIAMS

*

T/U/O Mayor & City Council
of Baltimore City

*

Plaintiff

*

-vs-

* CIVIL ACTION # WMN-02-2147

H. D. INDUSTRIES, INC.

*

Defendant

*

* * * * *

AMENDED COMPLAINT

ELECTION OF JURY TRIAL

Eric Williams, Plaintiff, by his attorney, Mark E. Herman, amends the original Complaint, and says:

COUNT I: NEGLIGENCE

1. On October 6, 1999, Plaintiff was in the employ of the Mayor & City Council of Baltimore City.
2. Plaintiff arrived in the 2600 block of Dulaney Street, Baltimore, Maryland 21223 to patch potholes using hot asphalt and an asphalt spreader truck that was manufactured and designed by the Defendant.
3. Plaintiff got out of the truck and turned on the lever control for the agitator, which breaks up the asphalt, and feeds it into the screw conveyor so it can be pushed out the chute at the rear of the hopper.
4. When no asphalt was coming out of the chute, Plaintiff climbed into the hopper.

5. Unbeknown to the Plaintiff, a co-employee came by and reactivated agitator.
6. As the rotating agitator moved, it snagged Plaintiff's left pant leg and pulled him down, cutting his leg and body which resulted in amputation of part of his left leg, caused him to incur substantial medical expenses, lost wages and other damages.
7. The Defendant was negligent in the manufacture and design of the product by not having a remote cut-off safety switch to stop the agitation, did not have appropriately placed mirrors to advise individuals on the outside of a co-employee on the inside given the high walls of the body of the asphalt containment portion, failed to provide a disconnect switch over the hopper area opening, failed to provide sufficient and unambiguous warnings and labels on the machinery, failed to provide appropriate training to all uses of the machine, to include failing to provide a videotape that could be shown to new users, failed in the standard of care required of the manufacturer of industrial machinery in protecting users of the product from foreseeable injury, failure to retrofit the warnings, failure to retrofit the manual, and further to retrofit with interlocks, and was otherwise negligent.

8. As a direct and proximate result of the Defendant's negligence, Plaintiff was injured as stated above.

WHEREFORE, Plaintiff prays judgment against the Defendant in the amount of Ten Million (\$10,000,000.00) Dollars.

COUNT II: STRICT LIABILITY

9. The Plaintiff incorporates the facts alleged above.
10. The Defendant's product is unreasonably dangerous and because of the unreasonable dangerousness of the Defendant's product, Defendant should be held strictly liable herein.

11. That the product was defectively designed for reasons stated above.
12. That the product reached the City of Baltimore, for which the Plaintiff was employed, in substantially unchanged condition from when it left the factory and was in a substantially unchanged condition when Plaintiff was injured.
13. That as a direct and proximate result of the Defendant's product being unreasonably dangerous, Plaintiff was injured as stated above.

WHEREFORE, Plaintiff prays judgment against the Defendant in the amount of Ten Million (\$10,000,000.00) Dollars.

COUNT III: BREACH OF WARRANTY

14. Plaintiff incorporates the previous facts.
15. The Defendant's product breached the implied warranty of merchantability, with regards to the safety of the use of such product, as designed.
16. That as a direct and proximate result of the breach of warranty, Plaintiff was injured as stated above.

WHEREFORE, Plaintiff prays judgment against the Defendant in the amount of Ten Million (\$10,000,000.00) Dollars.

Mark E. Herman, Fed. Bar #01056
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(410) 837-2144
Attorneys for Plaintiff

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ELECTION OF JURY TRIAL

MR./MS. CLERK:

The Plaintiff herein elects to have this case tried before a jury.

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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2004, a copy of the Amended Complaint and Election of Jury Trial which was electronically filed in this case on _____, was mailed via first class mail, postage prepaid, to Robert H. Bouse, Jr., Esq., Jonathan A. Cusson, Esq., Anderson, Coe & King, LLP, 201 N. Charles Street, Suite 2000, Baltimore, Maryland 21201, attorney for H. D. Industries, Inc., and Thurman W. Zollicoffer, Jr., Esq., City Solicitor, Mayor & City Council of Baltimore City, 101 City Hall, Baltimore, Maryland 21202.

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